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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ELIJAH P., a Person Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

AMBER P.,

Defendant and Appellant.

D053184

(Super. Ct. No. EJ2408A)

APPEAL from a judgment of the Superior Court of San Diego County, Gary M. Bubis, Judge. Reversed and remanded with directions.

Elijah P. was born in June 2000. He has significant behavioral problems and as a result has been in many placements. On October 24, 2006, the juvenile court terminated parental rights. Elijah's mother, Amber P., appealed. On October 25 Elijah was transitioned into a prospective adoptive home. In June 2007 while Amber's appeal was

pending, Elijah's prospective adoptive parents asked that he be removed. He was placed in a group home. In October 2007 this court issued its opinion in Amber's appeal, concluding substantial evidence did not support a finding that Elijah was likely to be adopted within a reasonable time, reversing the judgment terminating parental rights, and remanding for a new Welfare and Institutions Code¹ section 366.26 hearing. (*In re E.P.* (Oct. 18, 2007, D049807) [nonpub. opn.].) In March 2008 Elijah was moved to a Foster Family Agency (FFA) home. The FFA family expressed a desire to adopt him but did not have an approved home study. In June the juvenile court again found that Elijah was adoptable and terminated parental rights.

Amber appeals the June 2008 judgment terminating parental rights. She contends the adoptability finding is unsupported by substantial evidence and, alternatively, that the court should have continued the hearing pursuant to section 366.26, subdivision (c)(3) until the FFA family could be approved for adoption. On October 7 the San Diego County Health and Human Services Agency (the Agency) filed a letter brief conceding the judgment must be reversed based on a change in circumstances. The Agency states that Elijah was "recently . . . removed from the caregivers' home and is currently in a [FFA] home."² The Agency states that financial difficulties forced the caregivers to move, they are at least temporarily unable to adopt Elijah, and the Agency "is not

¹ All further statutory references are to the Welfare and Institutions Code.

² That is, Elijah was removed from the FFA home where he resided at the time of the June 2008 section 366.26 hearing and moved to another FFA home.

currently able to approve the caregivers[] for adoption at least partially due to this development."

Amber's counsel, Elijah's counsel, and the Agency's counsel have filed a stipulation for immediate issuance of the remittitur, which we accept. (Cal. Rules of Court, rule 8.272(c)(1).) Because the juvenile court's June 2008 adoptability finding was based solely on Elijah's expected adoption by a family who is no longer able to adopt, we reverse the termination of parental rights. (*In re Carl R.* (2005) 128 Cal.App.4th 1051, 1061-1062.)

DISPOSITION

The judgment is reversed. This case is remanded to the juvenile court with directions to conduct a new section 366.26 hearing. The remittitur is to issue forthwith.

IRION, J.

WE CONCUR:

NARES, Acting P. J.

McINTYRE, J.